

2012

# Current Status of the "Katyn Case" in Russia

Alexander Guryanov

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

---

## Recommended Citation

Alexander Guryanov, *Current Status of the "Katyn Case" in Russia*, 45 Case W. Res. J. Int'l L. 695 (2013)  
Available at: <https://scholarlycommons.law.case.edu/jil/vol45/iss3/1>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

A stylized world map in a light blue-grey tone serves as the background for the top section of the cover. The map shows the continents and is overlaid with a faint grid of latitude and longitude lines.

# Case Western Reserve Journal of International Law

---

Volume 45

Fall 2012

Issues 1 & 2

---

## CURRENT STATUS OF THE “KATYN CASE” IN RUSSIA

*Alexander Guryanov*

## CURRENT STATUS OF THE “KATYN CASE” IN RUSSIA

*Alexander Guryanov\**

*While not denying the mass executions of Polish prisoners of war by the Soviet NKVD, Russian authorities currently only recognize the Katyn Massacre as an ordinary crime that is long time-barred. Only a few leaders of the NKVD have been found guilty of any crime, but their names are kept secret. The victims of the shooting and their families cannot seek relief under the Russian “On the Rehabilitation of Victims of Political Repression” law. Further, the most essential materials of the investigation, conducted by the Russian Main Military Prosecutor’s Office from 1990 through 2004, are classified. The Russian Memorial Society makes four demands necessary to achieve a legal resolution of the case of the Katyn Massacre in Russia: (1) adoption of an adequate legal definition of the Katyn Massacre as a war crime and a crime against humanity; (2) formal disclosure of the identities of all perpetrators, starting with Stalin and the Politbiuro members as initiators and ending with all the performers of shooting; (3) recognition in accordance with Russian legislation of all murdered Polish citizens as victims of political repression; and (4) declassification of all materials of the Katyn Massacre investigation. These demands have been repeatedly rejected between 2006 and 2011 by the Chief Military Prosecutor’s Office and the Russian courts of all instances from the District Court up to the Supreme Court. This article details the Memorial*

---

\* Alexander Guryanov graduated in 1975 from the Physics Department of the State University of Moscow, received Ph. D. degree in Physics in 1985, and in 1993 joined the Research, Information and Public Enlightenment Center within the Memorial Society in Moscow. Soon thereafter, he became the chief coordinator of the Polish Program of the Memorial Society. In this capacity he has authored many scientific articles on Soviet political repressions directed at the Poles and Polish citizens of other nationalities. He edited and co-authored a collective work entitled *Repressions of the Poles and Polish Citizens of Other Nationalities*, published in Moscow by the Memorial Society in 1997. He also co-edited and co-authored seventeen volumes of the *Index of Repressed Persons* series, published together with the Polish Karta Center between 1997 and 2010 in Warsaw. Since 2007, Dr. Guryanov has been officially representing the Memorial Society before the Russian courts in connection with numerous complaints filed by the Memorial against contemporary proceedings of the Russian state institutions with respect to the Katyn crime.

*Society’s ongoing efforts to bring justice to the Katyn Massacre victims and their families.*

The Memorial Society, in addition to defending human rights in Russia, studies the history of political repression in the Soviet Union, documents the fate of repressed people, and assists in their moral and legal rehabilitation.<sup>1</sup> The Memorial Society also promotes access to sources of information about the crimes of totalitarian regimes. By education I am not a historian and certainly am not a lawyer, but I work at the research center of the Memorial Society, and I am engaged in studies of the history of Soviet political repressions against Polish citizens. In recent years, I have dealt with certain legal issues in court proceedings on aspects of the Katyn Massacre as a representative of the Memorial Society. Mrs. Diana Sork is the main lawyer for the Memorial Society in court proceedings.

The Memorial Society seeks the implementation of certain measures at the state level, without which a legal resolution of the case of Katyn Massacre in Russia is impossible. To this end, the Society makes four demands.

First, the Memorial Society requests adoption of an adequate legal definition of the Katyn Massacre appropriate to its essence as an act of Soviet state terrorism.

Second, there must be formal disclosure of the identities of all perpetrators, starting with those who ordered the massacre of thousands of Polish citizens and finishing with all those who carried out the extrajudicial executions. Although these actors are no longer alive, and thus cannot be tried in court, their names must be disclosed.

Third, all victims of the Katyn Massacre must be recognized by name as victims of political repression in accordance with the current Russian law, On the Rehabilitation of Victims of Political Repression (the Act).<sup>2</sup> According to the preamble of the Act, rehabilitation primarily requires official recognition that a particular person has been persecuted by the state for political reasons and that such

- 
1. *Memorial*, INT’L HISTORICAL-ENLIGHTENMENT HUMAN RIGHTS & HUMANITARIAN SOC’Y MEM’L, <http://www.memo.ru/eng/> (last visited Apr. 8, 2013).
  2. О реабилитации жертв политических репрессий [Law on Rehabilitation of Victims of Political Repression], Ведомости Съезда народных депутатов России и Верховного Совета Российской Федерации [Gazette of the Congress of People’s Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation], Sept. 23, 1993, No. 28 [hereinafter *Rehabilitation of Victims of Political Repression*]. See also *Russia: Law on Rehabilitation of Victims of Political Repression*, in III TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES: LAWS, RULINGS, AND REPORTS 797 (Neil J. Kritz ed., 1995).

persecution is incompatible with law and justice.<sup>3</sup> The consequence of rehabilitation under this Act is to provide benefits and compensation for the rehabilitated person, but not for his relatives. Nevertheless, official recognition that a particular person was a victim of political repression by the Soviet Union would be of great value for the relatives of executed Polish prisoners. On the other hand, for the Memorial Society it is equally important to ensure that the Russian state authorities comply with Russian laws, including the Act.

Fourth, all materials of the Katyn Massacre investigation conducted by the Russian Main Military Prosecutor’s Office from 1990 to 2004 must be declassified.

Before presenting the current state of these efforts, it is necessary to review how the official position of the Soviet Union and Russia towards the Katyn Massacre changed over time. From the autumn of 1941 to March 1943, Soviet authorities claimed they knew nothing about the fate of the Polish officers captured by the Soviets in September 1939.<sup>4</sup> After the Germans announced the discovery of graves of the Polish officers in the Katyn Forest in April 1943, Soviet authorities claimed that the Nazis carried out this execution.<sup>5</sup> Soviet authorities claimed the Nazis captured three Soviet camps near Smolensk, where Polish officers were kept, and executed the Polish officers in the summer of 1941.<sup>6</sup> This official position was reflected in the final report of the Burdenko Commission, created in January 1944, to investigate the shooting of Polish officers.<sup>7</sup> The report was intended to promote the official, but untrue, Soviet version. The Burdenko Commission relied on evidence and eyewitness testimony that was subsequently found to be fabricated.<sup>8</sup>

- 
3. See Rehabilitation of Victims of Political Repression, *supra* note 2, at pmb. (“The purpose of the present Law is to rehabilitation all victims of political repressions . . . to restore their civil rights, to eliminate other consequences of arbitrary rule, and to provide compensation for material and moral harm. . .”).
  4. See J.K. ZAWODNY, DEATH IN THE FOREST: STORY OF THE KATYN FOREST MASSACRE 80–81 (1962).
  5. *Records Relating to the Katyn Forest Massacre at the National Archives*, U.S. NAT’L ARCHIVES, <http://www.archives.gov/research/foreign-policy/katyn-massacre/> (last visited Apr. 8, 2013).
  6. *Id.*
  7. See *The Truth About Katyn*, SOVIET WAR NEWS 1 (Supp. 1944) (“The Special Commission for Ascertaining and Investigating the Circumstances of the Shooting of Polish Officer Prisoners by the German-Facist invaders in the Katyn Forest (near Smolensk) was set up on the decision of the Extraordinary State Commission for Ascertaining and Investigating Crimes Committed by the German-Facist Invaders and Their Associates.”).
  8. See *Investigation of the Murder of Thousands of Polish Officers in the Katyn Forest Near Smolensk, Russia: Hearings Before the Select*

Only in April 1990, under President Mikhail Gorbachev, did the Soviet Union acknowledge that Lavrentiy Beria, Vsevolod Nikolayevich Merkulov and their accomplices were guilty of the massacre of the Polish prisoners of war.<sup>9</sup> In the official statement of the Governmental Telegraph Agency of the Soviet Union, the massacre was described as one of the serious crimes of Stalinism.<sup>10</sup> In the autumn of 1990, the Soviet Main Military Prosecutor’s Office began to investigate the Katyn Massacre.<sup>11</sup> After the Soviet Union’s disintegration, the Russian Main Military Prosecutor’s Office continued the criminal investigation.

In October 1992, Russian President Boris Yeltsin ordered the documents that show the extrajudicial execution of Polish citizens had been carried out on the order of the Soviet leadership be made public.<sup>12</sup> The documents revealed that Joseph Stalin and five other members of the Politburo of the Central Committee of the Communist Party directly ordered the executions.<sup>13</sup> However, this political position did not establish a legal obligation. The official Russian legal position was formulated only on September 21, 2004, when the Main Military Prosecutor’s Office dismissed the criminal case due to the death of the accused.<sup>14</sup> At the same time, the Main Military Prosecutor’s Office classified the investigation materials, including the decision to dismiss the case, as secret and top secret; this decision was not publicly announced until March 2005.<sup>15</sup> The Main Military Prosecutor’s Office refused to reveal the perpetrators by name, saying only that they were a few leading officials of the

---

*Committee to Conduct an Investigation of the Facts, Evidence, and Circumstances of the Katyn Forest Massacre*, 82nd Cong. 235–38, 247 (1952) (discussing specific evidence of false testimony given by witnesses and other false evidence used in the Burdenko Commission reports).

9. See Masha Hamilton, *Gorbachev Documents Soviet Guilt at Katyn*, LA TIMES, April 14, 1990, at 1.
10. See *id.*
11. See Richard J. Hunter, *Katyn: Old Issues Threaten Polish-Russian Economic and Political Relations*, 17 EUR. J. SOC. SCI. 288, 291 (2010).
12. See *id.* (noting that on October 14, 1992, chief state archivist Rudolf Pichoja, a special envoy of Russian Federation President Boris Yeltsin, turned over official copies of original documents to Polish President Lech Walesa in Warsaw).
13. See *id.*
14. Michael P. Scharf & Maria Szonert-Binienda, *Katyn: Justice Delayed Or Justice Denied? Report of the Cleveland Experts’ Meeting*, 44 CASE W. RES. J. INT’L L. 535, 539 (2011).
15. See KATYN: A CRIME WITHOUT PUNISHMENT 259 (Anna M. Cienciala, Natalia S. Lebedeva & Wojciech Materski eds., Marian Schwartz, Anna M. Cienciala & Maia A. Kipp trans., 2007).

NKVD and their actions qualified only as “exceeding their authority with serious consequences in the presence of particularly aggravating circumstances,” under paragraph b of Article 193–17 of the former Penal Code of the Russian Soviet Federative Socialist Republic.<sup>16</sup> Thus, the main perpetrators—Stalin and the Politburo members—were excluded from the circle of persons responsible for the Katyn Massacre, and the execution of 22,000 Polish citizens was qualified only as an ordinary crime that is subject to a ten-year statute of limitations.<sup>17</sup> Those who carried out the execution, except a few NKVD leaders, were also not named as responsible parties. Only one explanation is possible: the Prosecutor’s Office does not consider carrying out a criminal order to be a crime.

In 2005 to 2006, the Main Military Prosecutor’s Office completed its legal review of the Katyn Massacre and refused to consider whether each individual prisoner of war who was shot was an individual victim of political repression. Such a refusal is completely contrary to current Russian law.<sup>18</sup> The formal reason for the Politburo’s March 5, 1940 decision on the execution of the Polish prisoners of war and inmates of prisons was a report from Beria to Stalin about the need to shoot these people, “based on the fact that all of them are steadfast incorrigible [sic] enemies of Soviet power . . . .”<sup>19</sup> Thus, the political motive of the shooting is obvious. In spite of this, the Main Military Prosecutor’s Office refuses to recognize not only a political motive in the executions, but also refuses to recognize the very execution of each individual prisoner of war, referring to the absence of individualized documentary evidence. In other words, while not denying the mass executions of Polish prisoners of war, the Main Military Prosecutor’s Office gives no individual identity to the multitude of victims. Thus, the official legal position in the short term is this: the investigation is terminated; the materials are classified; the Katyn Massacre is an ordinary crime that is long time-barred; only a few leaders of the NKVD, but not Stalin and other members of the Soviet leadership, are guilty; and the victims of the shooting are not subject to rehabilitation.

After March 2005, attempts were made to influence Russia’s official legal position. Applications to the Main Military Prosecutor’s Office on behalf of a number of massacre victims were made for

---

16. Letter from the International Memorial Society Board to President Dmitry Medvedev of the Russian Federation regarding the 70th Anniversary of the Katyn Massacre (Mar. 5, 2010), *available at* <http://hro.rightsinrussia.info/archive/stalin/memorial-on-katyn>.

17. *See* Scharf & Szonert-Binienda, *supra* note 14, at 537.

18. Rehabilitation of Victims of Political Repression, *supra* note 2, art. 2.

19. *Excerpts: Beria Letter to Stalin on Katyn*, BBC (Apr. 28, 2010), <http://news.bbc.co.uk/2/hi/europe/8649435.stm>.

rehabilitation in accordance with the On the Rehabilitation of Victims of Political Repression law. The Memorial Society submitted sixteen of these applications in 2006 as the first step to initiate rehabilitation.<sup>20</sup> Relatives of ten other victims filed applications for rehabilitation, including the son (currently living in the United States) of one of the executed prisoners of war. Moscow lawyers Anna Stavitskaya and Roman Karpinsky, acting independently of the Memorial Society, represent these victims.

The Memorial Society and other individual claimants have appealed the Main Military Prosecutor’s Office’s refusal to execute the On the Rehabilitation of Victims of Political Repression law in relation to the Katyn Massacre in the Russian courts of first, second, and supervisory instances—the Khamovnichesky District Court of Moscow, the Moscow Military District Court, the Moscow City Court, the Presidium of the Moscow City Court, and the Supreme Court of the Russian Federation. Family members of executed prisoners of war, in addition to the rehabilitation, demanded reversal of the Main Military Prosecutor’s Office’s decision to dismiss the Katyn criminal case. The family members seek to reopen the investigation, acknowledgment of the status of victims for them in accordance to Russian Criminal Procedure Code, and the opportunity to get acquainted with case materials. All of the above named courts denied the appeals,<sup>21</sup> thus affirming the legal position of the Main Military Prosecutor’s Office as the official position of Russia. As a result, the Memorial Society and other applicants were forced to turn to the European Court of Human Rights in Strasbourg, France, asserting that Russia has violated the European Convention on Human Rights and Fundamental Freedoms.<sup>22</sup> Currently, the Court considers the claim of ten families of executed Polish officers as a priority.<sup>23</sup> The Memorial Society is waiting for their complaint to reach the courts as well.

In 2006 and 2008, the Memorial Society submitted requests to the Main Military Prosecutor’s Office to declassify the key document of the Katyn case investigation—namely, the resolution on its termination. According to the Russian Criminal Procedure Code, the resolution to dismiss a criminal case must contain all the results of the investigation.<sup>24</sup> The Memorial Society considers declassification of

- 
20. See Inessa Jazhborovskaya, *The Katyn Case: Working to Learn the Truth*, RUSS. ACAD. SCI. SOC. SCI., 2011, at 34, 42.
21. See Janowiec and Others v. Russia, Judgment, App. Nos. 55508/07, 29520/09, ¶¶ 53, 58, 63, 69 (Eur. Ct. H.R., 2012).
22. See *id.* ¶ 1.
23. See *id.* ¶ 5.
24. UGOLOVNO-PROTSESSUAL’NYI KODEKS ROSSIISKOI FEDERATSII [UPK RF] [Criminal Procedural Code], art. 213 (Russ.).



this important document the first step to opening all the closed materials of the Katyn investigation. Under Article 7 of the On State Secrets law, classification of information about violations of human rights and freedoms of man and citizen, as well as information about violations of law by governmental authorities and their officials, is prohibited.<sup>25</sup> The Memorial Society appealed the Main Military Prosecutor’s Office’s refusal to perform the procedure assigned by the On State Secrets law, in the Khamovnichesky district court of Moscow. Unfortunately, this court of first instance, and then the Moscow City Court, in which the Memorial Society filed a cassation appeal, found no violations in the actions of the Main Military Prosecutor’s Office.<sup>26</sup>

In 2009, the Memorial Society turned to Russia’s highest state authority in the area of secrecy—the Interdepartmental Commission for the Protection of State Secrets. This department is supervised by the president of the Russian Federation.<sup>27</sup> The Memorial Society demanded the decision to classify Main Military Prosecutor’s Office’s resolution to dismiss the criminal Katyn case be overturned. The Interdepartmental Commission denied the Memorial Society’s appeal. The Memorial Society appealed this decision at the Moscow City Court, which, on November 2, 2010, ruled that the actions of the Main Military Prosecutor’s Office and the Interdepartmental Commission were legitimate. Despite the Moscow City Court’s flagrant violations of the Civil Procedure Code, the Supreme Court of the Russian Federation upheld the decision.<sup>28</sup> Thus, the Memorial Society is now faced with the need to send a supervisory complaint to the Presidium of the Supreme Court of the Russian Federation concerning the illegality of the classification of key material of the Katyn case, as well as the next complaint to the European Court of Human Rights.

There are two particular features of the Memorial Society’s applications to the courts worth noting. First, although the Memorial Society does not reject the possibility of recourse to international justice, the Memorial Society would prefer to achieve resolution of the Katyn case in the Russian courts. The Memorial Society considers the Katyn case primarily an internal problem of Russia itself, and only then as the problem of Russian-Polish relations. Second, appeals on

---

25. *See Janowiec and Others v. Russia*, App. Nos. 55508/07, 29520/09, ¶ 60.

26. *See id.* ¶¶ 55–58 (discussing the private nature of the proceedings for declassification and mentioning the disconnect between the City Court and the European Court of Human Rights).

27. *See id.* ¶ 60.

28. *See Russian Supreme Court Upholds Closure of Katyn Massacre Case*, RIANOVOSTI (Jan. 29, 2009, 3:55PM), <http://en.rian.ru/russia/20090129/119870665.html>.

the Katyn case decision filed by the Memorial Society in the Russian courts and the European Court of Human Rights are complaints of violation of the right of the Memorial Society to carry out its statutory activities and its right to a fair trial. These are differences from court cases brought by relatives of executed prisoners of war, who complain of a Russian violation of their own rights as victims.

However, in 2010, a new situation arose. After seventeen years of silence, the Russian authorities at last articulated Russia's political position on the Katyn Massacre. Prime Minister Vladimir Putin, and then more definitively President Dmitry Medvedev, publicly voiced their opinion about Stalin's culpability in the massacre of Polish citizens. On November 26, 2010, the State Duma of the Russian Federation made its first public statement noting the personal responsibility of Stalin and his associates as the main perpetrators of Katyn Massacre.<sup>29</sup> In 2010, copies of 137 of the 183 volumes of unclassified materials of the Russian investigation of the Katyn criminal case were handed over to Poland.<sup>30</sup> But none of the other thirty-six secret or top secret volumes has yet been declassified and handed over.<sup>31</sup> On January 26, 2011, President Medvedev's press office commented that the declassification of Katyn materials is ongoing and the copies will be transferred to Poland.<sup>32</sup> Formally, there is no contradiction: the recognition of the classification as legal in the past does not preclude the declassification in the future. Despite the recent decision of the Russian Supreme Court, some shift of Russia's official position may occur, at least on the declassification.

In general, the political declarations on the Katyn case are welcome, but the contradiction between the statements of Russian authorities and the legal position of the Main Military Prosecutor's Office, which has remained unchanged since 2004 and was regularly confirmed by the Russian courts, has now become more striking. While the legal position of the Russian state will not be aligned with political declarations, the case of the Katyn Massacre in Russia is not closed.

---

29. See *Russian Parliament Condemns Stalin for Katyn Massacre*, BBC (Nov. 26, 2010), <http://www.bbc.co.uk/news/world-europe-11845315>.

30. *Russia Considers Rehabilitating Polish Servicemen*, RT (Feb. 10, 2011), <http://rt.com/politics/russia-poland-katyn-ambassador/>.

31. Scharf & Szonert-Binienda, *supra* note 14, at 542.

32. See *id.*



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY